

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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ANDREW LEE-LEO HILL,

Plaintiff,

Case No. 1:10-cv-470

v.

HON. JANET T. NEFF

KENNETH McKEE et al.,

Defendants.

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**ORDER APPROVING REPORT AND RECOMMENDATION**

The court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C).

**THEREFORE, IT IS ORDERED** that the Report and Recommendation of the Magistrate Judge (Dkt 37), filed April 22, 2011, is approved and adopted as the opinion of the court.

**IT IS FURTHER ORDERED** that defendants Alvarez and Chick's Motion for Summary Judgment (Dkt 25) is **GRANTED**. Specifically, plaintiff's claims asserted against defendants Alvarez and Chick in their official capacity are dismissed on Eleventh Amendment grounds; plaintiff's claims against defendants Alvarez and Chick are dismissed without prejudice for failure to properly exhaust administrative remedies; defendant Alvarez's motion for summary judgment be granted; and defendant Chick's motion for qualified immunity be denied for the reasons stated in the Report and Recommendation.

**IT IS FURTHER ORDERED** that upon review of Plaintiff's claims, this Court can discern no good-faith basis for an appeal and so certifies in accordance with *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6<sup>th</sup> Cir. 1997).

**IT IS FURTHER ORDERED** that should plaintiff appeal this decision, the court will assess the \$455 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless plaintiff is barred from proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$455 appellate filing fee in one lump sum.

Dated: May 16, 2011

/s/Janet T. Neff

JANET T. NEFF

UNITED STATES DISTRICT JUDGE